

Friends & Families Matter

A Nonprofit Support Group for
Friends & Families of Incarcerated Loved Ones

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Dear Chairwoman MacDonald and Members of the Law and Justice Interim Committee:

Our organization is dedicated to friends and family members coping with the incarceration of a loved one. As you already know, the most critical factor in a person's successful reentry, habilitation, and rehabilitation is whether or not that person receives positive support from the community and from friends and family members. Yet, we must often cope with an overwhelming and intimidating bureaucracy that seems insensitive and unapproachable. We would prefer to work together with the Department of Corrections and the Board of Pardons and Parole because we ultimately share the same goals, but all too often we are stigmatized, belittled, and feel threatened. Our group is dedicated to turning this around and forming a positive working relationship with the Department of Corrections, the Board of Pardons and Parole, and any other willing partners so that we can work together to achieve our common objectives.

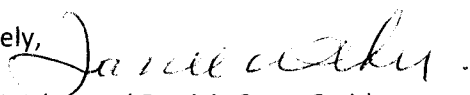
The key goals of our group are to:

- (1) Provide support groups to help friends and family members cope with sometimes overwhelming stress.
- (2) Be a key component within a network of community support systems to facilitate successful reentry and reduce recidivism.
- (3) Establish a partnership with the Department of Corrections so that we can work together to help our loved ones accept responsibility for their bad choices, get appropriate mental health treatment and education so they can make better choices, and support them in becoming a successful, contributing members of healthy and safe communities.

To these ends, we would like to share our group's perspective on each of the bill drafts you are considering today. Our comments are provided on the following pages.

Thank you for your hard work on these critical issues. We stand ready to assist you in any way we can and welcome any opportunity to work constructively with all other interested stakeholders.

Sincerely,



Janee Weber and Patricia Swan-Smith
On behalf of Friends & Families Matter

LCIj95 – Revising Parole Criteria

We Support with Amendments

We support putting the parole criteria in statute. We do not support criteria that is subjective and that allows for the criteria to be applied inconsistently. We also note that statements by victims, friends and family members, the prosecution, and the defense attorneys are important. However, these perspectives are an integral part of the sentencing process and are carefully considered by the sentencing judge. The parole hearing should not rehash the sentencing hearing or second-guess a judicially-considered sentence. Rather, the parole decision should be based entirely on an offender's progress toward habilitation and rehabilitation during the period of incarceration and an objective assessment of the offender's risk of reoffending. Thus, we support LCIj95, but only with the following amendments. We also support the Committee examining the South Dakota model.

NEW SECTION. Section 1. Nonmedical parole criteria – information criteria the board may consider. (1) The board may release an eligible offender on nonmedical parole only when, ~~in its opinion:~~

(a) there is a reasonable probability that the offender can be released without ~~detriment to the offender or to the community~~ serious risk to public safety according to a risk assessment tool developed in accordance with subsection (4); and

~~(b) release is in the best interests of society;~~

~~(c) the offender is able and willing to fulfill the obligation of a law-abiding citizen; and~~

(b) the offender ~~does not require continued~~ has completed all court-ordered correctional treatment, ~~or mental health therapy, vocational training, or other programs available in a correctional facility that will substantially enhance the offender's capability to lead a law-abiding life if released.~~ However, parole may not be denied based on this criteria if the offender's failure to complete the court-ordered program by the time of the parole hearing is due to a lack of opportunity for the offender to participate in the program or insufficient program capacity or qualified staff at the correctional facility.

(2) Parole may not be ordered as an award of clemency or a reduction of sentence or pardon.

(3) For a prisoner sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312:

(a) the board may require as a condition of parole participation in a supervised mental health treatment program ~~to ensure that the prisoner continues if the program is recommended by a licensed department of public health and human services mental health professional~~ to treat the prisoner's mental disorder; and

(b) parole may be revoked if a prisoner fails to comply with the terms of a supervised mental health treatment program described in subsection (3)(a), in which case the prisoner must be

recommitted to the custody of the director of the department of public health and human services pursuant to 46-14-312. However, parole may not be revoked if the failure to comply is due to the offender's inability to pay for the treatment.

~~(4) In making its determination regarding nonmedical parole release, a hearing panel shall consider all available and pertinent information regarding the prisoner, including~~ The risk assessment tool developed for the purposes of subsection (1)(a) must be aimed at assessing the public safety risk an offender's release may pose. The tool must be developed evidence-based applying valid research and proven methodologies. The assessment must be limited to consideration of the following factors to the extent these factors are recognized as valid under the evidence-based tool:

~~(a) the offender's maturity, stability, sense of responsibility, and development of traits and behaviors that increase the likelihood the offender will conform the offender's behavior to the requirements of law;~~

~~(b)(a) the adequacy of the offender's release plan, including whether, based on the offender's education, employment history, occupational skills, and mental health status, the offender has a plan for obtaining housing, employment, and any appropriate education, job training, or mental health treatment;~~

~~(b) the offender's ability and readiness to assume obligations and undertake responsibilities;~~

~~(d) the offender's education and training;~~

~~(e) the offender's family status and whether the offender has relatives who display an interest or whether the offender has other close and constructive associations in the community;~~

~~(f) the offender's employment history, occupational skills, and the stability of the offender's past employment;~~

~~(g) the type of residence, neighborhood, or community in which the offender plans to live;~~

~~(h) the offender's past use of chemicals, including alcohol, and past habitual or abusive use of chemicals;~~

~~(i) the offender's mental and physical makeup;~~

~~(j) (b) the offender's prior criminal record, including the nature and circumstances of the offense, date of the offense, and frequency of previous offenses;~~

~~(k) the offender's attitude towards law and authority;~~

~~(l) (c) the offender's conduct and employment, and attitude in the institution, including particularly whether the offender has taken advantage of opportunities for treatment and whether the offender is clear of major disciplinary violations prior to the hearing;~~

~~(m) (d) the offender's behavior and attitude compliance with probation or parole conditions during any previous experience of supervision and the recency of the supervision;~~

~~(n) (e) the reports findings of any physical, psychological, and mental health evaluations or reports that have been made by licensed or certified professionals in the field that are relevant to the likelihood of the offender committing a new crime if released on parole;~~

~~(o) written or oral statements from criminal justice authorities or any other interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the offender should be paroled. (5) A victim's statement may be kept confidential.~~

~~(p) whether parole at this time would diminish the seriousness of the offense; and~~

~~(q) any and all other factors that the hearing panel determines to be relevant.~~

In Section 2 amending 46-201, the following change to subsection (5): If the risk assessment tool used pursuant to [section 1] indicates the offender is a good candidate for parole, the hearing panel may not deny parole provided the offender has completed all court ordered programs pursuant to [section 1(1)(b)]. If a hearing panel denies parole, it may order that the prisoner serve up to 6 2 years before a hearing panel conducts another hearing or review. ~~The board shall adopt by administrative rule a process by which a prisoner may request an earlier hearing or review.~~

In Section 3 amending 46-23-202, the following changes:

46-23-202. Initial parole hearing — conduct of hearing Parole hearing. Within the 2 months prior to a prisoner's official parole eligibility date or as soon after that date as possible, the department shall make the prisoner available for a hearing before a hearing panel. The hearing panel shall consider all available and pertinent information regarding the prisoner, including:

- ~~(1) the circumstances of the offense;~~
- ~~—— (2) the prisoner's previous social history and criminal record;~~
- ~~—— (3) the prisoner's conduct, employment, and attitude in prison;~~
- ~~—— (4) the reports of any physical, psychological, and mental evaluations that have been made; and~~
- ~~—— (5) written or oral statements from criminal justice authorities or any other interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A victim's statement may also include but is not limited~~

~~to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the prisoner should be paroled. The victim's statement may be kept confidential. The only the criteria in [section 1] when making its parole decision. The hearing panel shall document the results of the risk assessment tool used pursuant to [section 1] and the panel's rationale for its parole decision. This documentation must be made available upon request to the offender and any person designated by the offender and to any victim or person designated by the victim. The documentation may not include information that must be kept confidential under Article II, Section 10, of the Montana constitution.~~

LCIj96 – Conditions of Parole

We Support with Amendments

We strongly agree that the conditions of parole should be set by the sentencing judge. The role of the department should be to enforce those conditions. The role of the Board of Pardons and Parole should be to provide, through its revocation hearing process, a check and balance on revocations requested by parole officers. Thus, we support LCIj96, but only with the following important amendment:

Strike "department or the" in line 4 of Section 1. The Committee may also wish to include an internal reference in the bill to the sentencing statutes, such as 46-18-202, MCA, which allow the sentencing judge to add parole restrictions.

The department's parole conditions are available to and may be referenced by the sentencing judge. The proposed bill allows for the department to seek modification of these conditions if necessary. The department should not be able to alter or add to those conditions. **We urge the Committee to request a staff legal memo on case law concerning parole conditions.** The court has made significant decisions limiting the authority to add parole conditions not imposed by the sentencing judge and that also provide guidance to judges concerning what parole conditions the judge may or may not impose.

LCIj97 – Electronic Recording of Parole Hearings

We Support with Amendments

This reform is long overdue and we applaud the Committee for bringing this bill. We are concerned only about the opportunity for information to be withheld based on an overly-broad interpretation of a safety or security interest. Thus, we request the following amendment:

Add to subsection (5) the following sentence: If information is withheld based on a safety or security concern, the Board must describe the nature of the information withheld and explain why it would present a safety or security risk if revealed.

LClj98 – Board Rules to Be Subject to Rule Review Process

We Support As Drafted – Not LClj99

We strongly support ensuring that Board rules are subject to the MAPA rule review process. It will ensure the rules receive review by legislative staff to ensure the rules do not exceed the Board's statutory authority, that the rule is clearly drafted, and that stakeholders have a chance to offer public comment. We believe this will vastly improve the relationship between the Board and friends, family members, and communities who are the ones who are critical to positive outcomes for those who are paroled. We support LClj98 over LClj99 because we do not see a need for the Board to be subject to the contested case and judicial review of contested case provisions contained in the MAPA chapter.

Other Bills for Your Next Meeting

In the spirit of constructive dialogue for change to help us meet our common goals, we would like to see the Committee consider at its next meeting bill drafts to do the following:

1. Provide for certificate of rehabilitation and a safe harbor to help parolees find gainful employment. See HB 518 from 2013 Session attached.
2. Provide "good time" incentive for parolees to comply with parole conditions. See material submitted with LC1765 from the 2013 Session.
3. Prohibit revocation of parole for failure to pay fees (expanding the criteria suggested above in our proposed amendment in LClj95, Section 1 (1)(b) for offenders with mental disorders) or for failure to find or keep employment due to a mental health disorder or disability.
4. Request a legislative study for the next interim that would examine :
 - (a) probation and parole revocation and alternatives to a recommitment to prison;
 - (b) qualifications, training, salary, and duties of probation and parole officers;
 - (c) pre-sentencing investigations, scope and use; and
 - (d) pre-release centers, how they are funded, and who should or should not be paroled to a pre-release center.

HOUSE BILL NO. 518

INTRODUCED BY J. GURSKY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CERTAIN PROTECTIONS FOR EMPLOYERS, EDUCATIONAL PROGRAMS OR INSTITUTIONS, AND LANDLORDS REGARDING EMPLOYMENT OF, ENROLLMENT OF, OR RENTAL TO INDIVIDUALS WHO HAVE CRIMINAL BACKGROUNDS; PROVIDING FOR A REHABILITATION CERTIFICATE AS A PRESUMPTION OF REHABILITATION AND A DEFENSE AGAINST LIABILITY; AMENDING SECTION 37-1-203, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

WHEREAS, the United States Equal Employment Opportunity Commission has determined that an employer's use of an individual's criminal history in making employment decisions may violate the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1964, as amended; and

WHEREAS, based on longstanding court decisions, national data, and existing federal guidance, the Equal Employment Opportunity Commission has determined that criminal record exclusions in employment, education, and housing have disparate impacts based on race and national origin; and

WHEREAS, the Equal Employment Opportunity Commission and the United States Department of Labor have placed a high priority on ensuring adherence to their guidance and regulations to avoid discrimination of a protected class when hiring or employing an individual with a criminal record; and

WHEREAS, an employer may be found liable for negligent hiring or negligent employment of a person with a criminal history who is involved in a subsequent incident or act, regardless of whether the subsequent act or behavior was within the scope of employment; and

WHEREAS, it is important for employers and other entities, including educational institutions, to have a mechanism to avoid potential liability for negligence as they try to balance concerns about violating an individual's civil rights with concerns about hiring someone with a criminal record; and

WHEREAS, research conducted in the last 60 years has shown that offenders who find gainful employment, enter career fields, and complete vocational and postsecondary education programs have less than a 4% recidivism rate; and

WHEREAS, reducing the recidivism rate among ex-offenders increases community safety and productivity and reduces incarceration rates and the impact of incarceration rates on future generations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Safe harbor in relation to employing individuals with criminal records

-- affirmative defense. (1) An employer may not be held liable regarding claims of negligent hiring or negligent employment for acts committed by an employee with a criminal record if the acts are committed outside the scope of the employment and:

(a) the employer reviewed an arrest record prior to hiring that did not show a disposition of the case or that indicated an acquittal or a dismissal;

(b) the conviction was for:

(i) a misdemeanor offense; or

(ii) an offense that was not related to the employment; or

(c) the employee with a criminal record has a valid rehabilitation certificate as provided in [section 2].

(2) Acceptance of a rehabilitation certificate is an affirmative defense for an employer against discrimination actions brought under the disparate impact provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq.

NEW SECTION. Section 2. Rehabilitation certificate -- conditions -- presumption. (1) Subject to

subsection (2), after filing a petition with the sentencing court or the district court for the judicial district in which the individual with a criminal record resides, the individual with a criminal record must be issued a rehabilitation certificate if the individual:

(a) has received a conditional discharge under 46-23-1020, issued by the department of corrections, granted by the court in the jurisdiction where the individual resides, or granted by the sentencing court or has completed 3 years of parole or probation or a combination of parole and probation; and

(b) provides evidence of meeting two or more of the achievements listed in 46-23-1027 while in a community corrections program, serving a sentence on parole, or serving a sentence on probation or after 3 years in the community following discharge of a sentence.

(2) To be eligible for a rehabilitation certificate, an individual with a criminal record:

(a) may not have been convicted of a misdemeanor offense other than traffic violations, excluding violations under 61-8-401 or 61-8-406; and

(b) must have held gainful employment for at least 20 hours a week for a period equaling 3 years.
Periods of involuntary unemployment may not count against the individual.

(3) The rehabilitation certificate creates a presumption of rehabilitation and successful reentry into the community. The presumption is to be a bar against use of the individual's criminal record against the individual in:

(a) applications for attendance at a postsecondary educational institution or vocational training program or school; or

(b) applications for employment, housing, or professional and occupational licensure.

(4) (a) The presumption provided for in subsection (3) may be overcome based on substantial evidence that after receiving the rehabilitation certificate the individual is not rehabilitated or the board of pardons and parole returned the individual to a regular parolee status or revoked the parole.

(b) The presumption does not overcome federal or state limitations for which criminal background checks are required by law.

(5) The rehabilitation certificate is automatically revoked if the individual with the rehabilitation certificate is convicted of a felony or a misdemeanor offense as described in 46-23-1020(2)(b).

NEW SECTION. Section 3. Safe harbor in relation to accepting students with criminal records -- affirmative action. (1) An educational program or educational institution may not be held liable for acts committed by a student with a criminal record who is accepted into and enrolled in the program or institution if:

(a) the arrest record reviewed by the educational program or educational institution prior to accepting the student with a criminal record did not show a disposition of the case or indicated an acquittal or a dismissal;

(b) the student was convicted for a misdemeanor offense; or

(c) the student has a valid rehabilitation certificate as provided in [section 2].

(2) Acceptance of a rehabilitation certificate is an affirmative defense for an educational program or educational institution against discrimination actions brought under the disparate impact provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq.

NEW SECTION. Section 4. Safe harbor for landlords renting or leasing to individual with criminal record. (1) A landlord may not be held liable for acts committed by a tenant with a criminal record if the landlord reviewed the criminal history of the tenant prior to renting to the tenant and:

1 (a) the arrest record did not show a disposition of the case or indicated an acquittal or a dismissal;

2 (b) the conviction was for a minor offense; or

3 (c) the tenant provided to the landlord a valid rehabilitation certificate as provided in [section 2].

4 (2) Acceptance of a rehabilitation certificate is an affirmative defense for a landlord against discrimination
5 actions brought under the disparate impact provisions of Title VII of the Civil Rights Act of 1964, as amended, 42
6 U.S.C. 2000e, et seq.

7
8 **Section 5.** Section 37-1-203, MCA, is amended to read:

9 **"37-1-203. Conviction not a sole basis for denial.** (1) Criminal convictions ~~shall~~ do not operate as an
10 automatic bar to being licensed to enter any occupation in the state of Montana. ~~No~~ A licensing authority ~~shall~~
11 may not refuse to license a person solely on the basis of a previous criminal conviction, ~~provided, however,~~
12 ~~where~~ However, if a license applicant has been convicted of a criminal offense and ~~such that~~ criminal offense
13 relates to the public health, welfare, and safety ~~as it applies to~~ in relation to the occupation for which the license
14 is sought, the licensing agency may, after investigation, find that the applicant ~~so~~ who has been convicted has
15 not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

16 (2) A rehabilitation certificate provided for in [section 2] is presumptive evidence of rehabilitation."
17

18 **NEW SECTION. Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an
19 integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [section 1].

20 (2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the
21 provisions of Title 46, chapter 23, part 10, apply to [section 2].

22 (3) [Section 3] is intended to be codified as an integral part of Title 20, chapter 1, and the provisions of
23 Title 20, chapter 1, apply to [section 3].

24 (4) [Section 4] is intended to be codified as an integral part of Title 70, chapter 24, and the provisions
25 of Title 70, chapter 24, apply to [section 4].
26

27 **NEW SECTION. Section 7. Retroactive applicability.** [Section 2] applies retroactively, within the
28 meaning of 1-2-109, to individuals with criminal records acquired on or after October 1, 2009, who petition for a
29 rehabilitation certificate to the sentencing court or the district court for the judicial district in which the individual
30 resides.

31 - END -